

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

BILLY JAMES FLEMING,

Plaintiff,

v.

CIVIL ACTION NO. 5:14-cv-24130  
(consolidated with 5:14-cv-24131 & 5:14-cv-24132)

JAN-CARE, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

On July 29, 2014, the Plaintiff filed three pro-se Complaints, each pursuant to 28 U.S.C. § 1332, initiating three separate civil actions. The first Complaint (Document 3 in Civil Action No. 5:14-cv-24130) names Jan-Care as Defendant. The second Complaint (Document 3 in Civil Action No. 5:14-cv-24131) names Wal-Mart Stores #1351 as Defendant. The third Complaint (Document 3 in Civil Action No. 5:14-cv-24132) names Raleigh General Hospital and Doctor Fisher as Defendants.

By Standing Order (Document 4) entered in each case on July 30, 2014, these civil actions were referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. By Order (Document 5) of September 3, 2014, the Magistrate Judge consolidated the three cases.

Subsequently filed in the matter were the following motions: 1) Defendant Raleigh General Hospital's Motion to Dismiss Complaint (Document 15) filed on September 16, 2014; 2) Defendant Claims Management, Inc.'s Motion to Dismiss Complaint (Document 18) filed on September 24, 2014; 3) Defendant Jan-Care's Motion to Dismiss Complaint (Document 20) filed on September 25, 2014; 4) Defendant Rodney Fisher's Motion to Dismiss Complaint and Alternative Motion for Summary Judgment for Failure to Comply with the Prerequisites of the MPLA (Document 23) filed on September 26, 2014; and 5) Plaintiff's letter-form Motion for Voluntary Dismissal (Document 30 in Civil Action No. 5:14-cv-24130; Document 6 in Civil Action Nos. 5:15-cv-24131 and 5:14-cv-24132) filed on October 21, 2014.

On April 28, 2015, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 33) wherein it is recommended that this Court: 1) grant the Plaintiff's letter-form Motion for Voluntary Dismissal; 2) deny as moot Defendant Raleigh General Hospital's Motion to Dismiss Complaint; 3) deny as moot Defendant Claims Management, Inc.'s Motion to Dismiss Complaint; 4) deny as moot Defendant Jan-Care's Motion to Dismiss Complaint; and 5) deny as moot Defendant Rodney Fisher's Motion to Dismiss Complaint and Alternative Motion for Summary Judgment for Failure to Comply with the Prerequisites of the MPLA.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by May 15, 2015<sup>1</sup>; none were filed by any party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*,

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<sup>1</sup>The docket reflects that the *Proposed Findings and Recommendation* mailed to the Plaintiff was returned as undeliverable on May 8, 2015, and re-mailed to a different address on that date. As of the date of this *Memorandum Opinion and Order*, no objections have been filed.

474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** as follows: 1) Plaintiff's letter-form Motion for Voluntary Dismissal (Document 30 in Civil Action No. 5:14-cv-24130; Document 6 in Civil Action Nos. 5:15-cv-24131 and 5:14-cv-24132) is **GRANTED**; 2) Defendant Raleigh General Hospital's Motion to Dismiss Complaint (Document 15) is **DENIED AS MOOT**; 3) Defendant Claims Management, Inc.'s Motion to Dismiss Complaint (Document 18) is **DENIED AS MOOT**; 4) Defendant Jan-Care's Motion to Dismiss Complaint (Document 20) is **DENIED AS MOOT**; and 5) Defendant Rodney Fisher's Motion to Dismiss Complaint and Alternative Motion for Summary Judgment for Failure to Comply with the Prerequisites of the MPLA (Document 23) is **DENIED AS MOOT**.

Further, the Court **ORDERS** that this matter be **REMOVED** from the Court's docket.

Lastly, the Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: June 2, 2015

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA